

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

Jacob Anthony Samborski, Jr.
and
Judith Ann Samborski,

Plaintiffs,

vs.

Green Tree Servicing, LLC,

Defendant.

Case No. 09-43320-drd13

Adversary No. 14-04010-drd

**MOTION TO COMPEL DEFENDANT TO ISSUE A CORRECTED 1099
AND FOR ATTORNEYS FEES**

COME NOW Plaintiffs Jacob Anthony Samborski, Jr. and Judith Ann Samborski, (herein after “Plaintiffs”) by and through their attorneys at The Law Offices of Tracy L. Robinson, LC, and for their Motion to Compel Defendant to Issue a Corrected 1099 and for Attorneys Fees, state as follows:

1. Plaintiffs filed an Adversary Proceeding against Defendant Green Tree Servicing, LLC (herein after “Defendant”) on January 27, 2014.
2. The parties reached a settlement agreement on April 22, 2014 where Defendant would issue a refund check of the overpayment to Plaintiffs in the amount of \$433.57 and issue a check for attorney fees in the amount of \$1,000.00 to Plaintiffs’ counsel.
3. Plaintiffs signed a Settlement Agreement and it was forwarded to Defendant’s counsel on April 28, 2014.
4. From April 28, 2014 to July 10, 2014, Plaintiffs’ counsel had a difficult time obtaining the fully executed Settlement Agreement and the checks from Defendant.
5. On July 10, 2014, Plaintiffs filed a Motion to Compel Enforcement of the Settlement Agreement.
6. On July 30, 2014, Defendant filed a Response alleging the delay was caused by

Plaintiffs' refusal to provide a W-9 Form.

7. On July 30, 2014, Plaintiffs filed a Reply questioning the necessity of a W-9 when the check was for a refund of funds paid in error, not taxable income.

8. The W-9 Form is an IRS *income tax* form required by a person or entity "who is required to file an information return with the IRA to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA." See, <http://www.irs.gov/uac/Form-W-9,-Request-for-Taxpayer-Identification-Number-and-Certification>.

9. The entity requesting a W-9 then maintains this *income tax* form, and in turn, issues a 1099 Form to the person who received the check for his or her own tax purposes the following year.

10. Plaintiffs' counsel did not want Defendant erroneously issuing a 1099 Form to Plaintiffs to tax them on the refund check.

11. The Motion to Compel was subsequently settled and the Adversary Proceeding was closed on August 14, 2014.

12. On February 13, 2015, Plaintiffs contacted counsel that they received a 1099 from Defendant for the \$433.57.

13. That same day, counsel emailed Defendant's counsel regarding the erroneous 1099 Form and requested that Defendant issue a corrected 1099 to Plaintiffs.

14. On February 18, 2015, Plaintiffs' counsel sent a follow up email to Defendant's counsel, to which counsel responded that he was still waiting to hear back from Defendant.

15. On April 15, 2015, Plaintiffs contacted counsel that they still had not received a correct 1099 and were forced to file an extension on their taxes.

16. That same day, counsel emailed Defendant's counsel following up on the matter, to which counsel responded, "I will forward your request to my client but can do nothing more than that."

17. To date, Plaintiffs have not received a corrected 1099 from Defendant.

18. Plaintiff has incurred attorney fees of \$600.00 in addressing this issue, preparing and prosecuting this Motion.

Wherefore, Plaintiffs pray that an Order be entered requiring Defendant to immediately send Plaintiffs' counsel a corrected 1099, requiring Defendant to tender an additional sum of \$600.00 to Plaintiffs' counsel for the attorney fees and costs incurred in ultimately prosecuting this Motion, and for such further relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

**THE LAW OFFICES OF TRACY L.
ROBINSON, LC**

By: /s/ Chelsea S. Springer
Chelsea S. Springer MO #51089
1125 Grand Blvd., Suite 1300
Kansas City, MO 64106
(816) 842-1317 Phone
(816) 842-0315 Fax
ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

This certifies that on this 10th day of June, 2015, the foregoing was electronically filed with the Clerk of the Court by using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Chelsea S. Springer
Attorney for Plaintiffs